IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.1001 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
Versus
KHATKI IQUBAL @ TIODI GULAB & ANR.

Appearance:
1. Criminal Appeal No. 1001 of 1986
MR IM PANDYA, APP for Appellant
MR YU MALIK for Respondents

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 29/12/2004

ORAL JUDGEMENT
(Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

Instant appeal filed under Section 378 of the Code of Criminal Procedure, 1973 ("the Code" for short)

is directed against judgment dated May 29, 1986 rendered by the learned Additional Sessions Judge, Surendranagar, in Sessions Case No.31 of 1985 by which the respondents are acquitted of the offences punishable under Sections 147, 302 read with Section 149 of Indian Penal Code ("IPC" for short), Section 302 read with Section 114 IPC and Section 120(B) IPC as well as Section 302 read with Section 34 IPC.

2. The facts emerging from the record of the case are as under:-

Complainant Narayan Ramjibhai is residing at Surendranagar. He is running a garage in the name and style of "Deep Auto Center" where motorcycles and rickshaws are being repaired. Name of his cousin was Babubhai, who was running a rickshaw. The incident in question had taken place on May 27, 1985. On the day of incident, Babubhai came to the house of the complainant and informed the complainant that the respondent No.1 had dashed his rickshaw with the rickshaw of his uncle Vashrambhai as a result of which, Indrajitsinh Raja, who was original accused No.7, had beaten Vashrambhai and the respondent No.1 had demanded Rs.250=00 as damages to his rickshaw from Vashrambhai whereas Vashrambhai was not inclined to give the said amount. Babubhai also informed the complainant that he had made an attempt to mediate, but the respondent No.1 and Indrajitsinh Raja had demanded Rs.250=00 and threatened him if amount was not paid. After giving this information to the complainant, Babubhai went to his house whereas the complainant went to his garage to attend his work. At 6.45 p.m., the complainant found that the respondent No.1 in the company of Indrajitsinh Raja and others were loitering near his garage. The complainant called the respondent No.1, but ignoring the call of the complainant, the respondent No.1 went away. Meanwhile, Babubhai parked his rickshaw near Prashant Chambers and came to the garage of the complainant for the purpose of drinking water. After drinking water, he proceeded towards his rickshaw but when he reached toilet situated in Ambedkar Chawk, the respondent No.1 as well as Indrajitsinh Raja and four to five other persons surrounded him. Indrajitsinh Raja caught hold of Babubhai from behind and knocked him to the ground. Babubhai raised shouts for help and therefore, the complainant as well as his brother Deepak, who were sitting in the garage started running towards the toilet, but Gora Bhavan, Dahya Amarsinh, Manhar Meghji, Kishore Ramji, etc. reached earlier in point of time the place where Babubhai was knocked to the ground whereas the respondent No.1 inflicted knife blow on the

deceased. The respondent No.1 aimed another blow at the deceased and, therefore, Deepak, who is brother of the complainant, tried to intervene, but the respondent No.1 also attempted to cause injury to Deepak with knife as a result of which, Deepak started running towards Alankar Road. Deepak was chased by the respondent No.1 and Indrajitsinh Raja. Deceased Babubhai, who had received injury, got up and found that Deepak was being chased by the respondent No.1 and Indrajitsinh Raja and, therefore, he started running after the respondent No.1 and Indrajitsinh Raja followed by the complainant. However, deceased Babubhai fell down near rickshaw bearing Registration No.9255, which was parked near Municipal School No.13. The complainant brought the rickshaw of deceased Babubhai to the place where Babubhai had fallen down. He was removed to hospital by the complainant as well as by Deepak and Gora Bhavan. On way to the hospital, deceased Babubhai is alleged to have informed the complainant as well as Deepak and Gora Bhavan that he was assaulted by the respondent No.1 as after dashing his rickshaw with the rickshaw of his uncle, the respondent No.1 had demanded money, but he had refused to pay the amount demanded by the respondent No.1. Deceased Babubhai succumbed to his injuries within 15 to 20 minutes at the hospital. Mr.Poonamchand Laljibhai, who was Police Inspector of Surendranagar Police Station, was going towards Ambedkar Chawk from the Bus-Station and found that a crowd had collected. On inquiry, it was learnt by him that a Harijan boy was injured with knife and was removed to the hospital. Therefore, he went gone to the hospital where Narayanbhai lodged his complaint. The complaint of Narayanbhai was investigated by the Investigating Officer and after usual investigation, the respondents and five other were chargesheeted for the commission of offences punishable under Sections 147, 148, 149, 302 IPC and Section 135 of the Bombay Police Act, 1951 in the Court of learned Judicial Magistrate First Class, Surendranagar. As the offence punishable under Section 302 IPC is exclusively triable by a Court of Sessions, the case was committed to the Sessions Court, Surendranagar, where it was numbered as Sessions Case No.31 of 1985.

3. The learned Additional Sessions Judge, Surendranagar, to whom the case was made over for trial, framed charge against the accused at Exh.3. The charge was read over and explained to the accused who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined: (1) Ghanshyambhai Parmanand Kotecha as P.W.-1 at Exh.13; (2) Babubhai Laxmanbhai as P.W.-2 at Exh.15; (3) Narayanbhai Ramjibhai

as P.W.-3 at Exh.17; (4) Deepak Ramjibhai as P.W.-4 at Exh.18; (5) Dahyalal Amarshi as P.W.-5 at Exh.19; (6) Manharbhai Meghjibhai as P.W.-6 at Exh.20; (7) Vashrambhai Premjibhai as P.W.-7 at Exh.21; (8) Manjibhai Chhaganbhai as P.W.-8 at Exh.22; (9) Prabhubhai Mohanbhai as P.W.-9 at Exh.25; (10) Gopalbhai Surabhai as P.W.-10 at Exh.27; (11) Kanjibhai Harjibhai as P.W.-11 at Exh.28; (12) Bachubhai Madhubhai as P.W.-12 at Exh.30; and (13) Punamchand Laljibhai as P.W.-13 at Exh.36, to prove its case against the accused. The prosecution also produced documentary evidence such as postmortem notes of deceased Babubhai at Exh.14; map of place of incident at Exh.16; panchnama of place of occurrence at Exh.26; result of analysis at Exh.33, inquest report at Exh.34; complaint of Narayanbhai at Exh.37, etc. in support of its case against the accused.

4. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the accused the circumstances appearing against them in the evidence of prosecution witnesses, and recorded their further statements as required by Section 313 of the Code. In their further statements, the case of the accused was that of denial and no defence evidence was adduced by any of them.

5. On appreciation of evidence led by the prosecution, the learned Judge held that it was proved by the prosecution that deceased Babubhai died a homicidal death. However, the learned Judge found that there were glaring deficiencies in the prosecution case and it was not proved by the prosecution beyond reasonable doubt that the respondent No.1 had inflicted knife blow on the deceased nor any evidence was adduced by the prosecution to establish that other accused had either aided or abetted or shared the common intention of the respondent No.1 to cause death of the deceased. In view of abovereferredto conclusions, the learned Judge has acquitted the accused by judgment dated May 29, 1986 giving rise to instant appeal.

6. This Court has heard Mr.I.M.Pandya, learned Additional Public Prosecutor for the State, and Mr.Y.U.Malik, learned counsel of the respondents, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

7. The fact that deceased Babubhai died a homicidal

death is not disputed before this Court. However, what is surprising is that instant appeal is also filed against the respondent No.2, who was original accused No.6 in Sessions Case No.31 of 1985, though no evidence at all was adduced by the prosecution to establish his involvement in commission of murder of deceased Babubhai. It is relevant to notice that as per the prosecution case, the respondent No.1 and the original accused No.7 had chased Deepakbhai after deceased Babubhai was assaulted by the respondent No.1, but no overt act was attributed to the original accused No.6 at all. Under the circumstances, this Court wonders as to why the State Government has filed appeal against the accused No.6. Further, the learned Additional Public Prosecutor, who conducted the case before the trial Court, had conceded before the trial Court that no evidence was adduced by the prosecution to show the involvement of original accused Nos.2 to 6 in instant case. On the basis of said concession and appreciation of evidence on record, the learned Judge of the trial Court has acquitted the accused Nos.2 to 6. Therefore, the State Government was not justified in filing appeal against original accused No.6. The appeal against the respondent No.2, who is original accused No.6, is, therefore, liable to be dismissed.

8. As far as merits of the case is concerned, this Court finds that the case of the prosecution that after receiving stab injury, the deceased noticed that original accused Nos.1 and 7 were chasing witness Deepakbhai and, he, therefore, started chasing original accused Nos.1 and 7, is highly doubtful. Dr.G.P.Kotecha, who had performed autopsy on the dead body of the deceased, has clearly stated that the nature of injury sustained by the deceased was such that it was not possible for him to get up and run after original accused Nos.1 and 7. Further, no blood marks were found at the place where the deceased was allegedly assaulted by the respondent No.1, but the pool of blood was found at another place, namely, near rickshaw bearing registration No.9255, which was parked near the School. The glass of rickshaw bearing registration No.9255 was found to be broken and stained with blood of the deceased, which is quite evident from the report of the serologist. However, how the blood of the deceased was found on the glass of the said rickshaw is not explained by the prosecution. There is no manner of doubt that the place of incident is shifted by the prosecution and, therefore, the genesis of the incident itself becomes doubtful. It is relevant to notice that initially the complainant Narayanbhai had named seven accused and as observed earlier, the learned Additional

Public Prosecution, who had appeared before the trial Court, had conceded that the prosecution had no case against the accused Nos.2 to 6. Thus, false involvement of original accused Nos.2 to 6 in instant case is evident. In fact, the complainant Narayanbhai has stated in his examination-in-chief that he was not knowing original accused Nos.2 to 6. If that is so then this Court fails to understand as to why he had named those accused in his complaint before the Police. Therefore, no implicit faith can be placed on the testimony of the complainant. It is rightly observed by the learned Judge of the trial Court that the place of offence was indicated near the garage so that certain highly interested persons can be projected before the Court as eye witnesses. The evidence on record also shows that near Municipal School No.13 where the deceased was assaulted, several shops are situated, but no independent witness has been examined by the prosecution. According to the prosecution, the motive which prompted the respondent No.1 to cause injury to deceased Babubhai, was non-payment of compensation for damage caused to his rickshaw. However, Vashrambhai Premjibhai, who is examined at Exh.21, has stated in his cross-examination that President of Rickshaw Drivers' Association Mr.Vasantbhai Dave had intervened in the matter and a compromise was arrived at regarding payment of compensation to be paid to the respondent No.1. If the dispute was settled then there was no earthly reason for the respondent No.1 to assault the deceased. The claim of the complainant that the respondent No.1 had assaulted deceased Babubhai becomes doubtful as in the complaint he has referred to respondent No.1 as "Titodi" and not as "Iqbal Titodi" though it was claimed by him that he was knowing the respondent No.1 very well. The evidence of the complainant read with that of his brother Deepakbhai would indicate that at the time of incident, they were present in the garage and, therefore, it is rightly held by the learned Judge of the trial Court that the complainant and his brother had no opportunity to witness the incident of assault on deceased Babubhai by the respondent No.1. The complainant has stated that the deceased had received injury on right side of his chest whereas medical evidence on record establishes that the deceased had received injury on left side of his chest. If the complainant had been an eye witness to the incident, he would have correctly described the injury. Further, the complainant has stated that fist and kick blows were also given to the deceased, but no such injuries were noticed by the doctor, who had performed autopsy on the dead body of the deceased. Thus, medical evidence on record completely contradicts the

complainant. Several other drawbacks in the prosecution case have been noticed by the learned Judge of the trial Court while appreciating the evidence on record. They are to be found in paragraphs 27 to 47 with which this Court fully concurs.

9. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Judge who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Judge, the Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Judge and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Judge and, therefore, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Judge in the judgment which is impugned in the appeal.

(J.M. Panchal, J.)

(M.C. Patel, J.)

Rajendra